REMARKS/ARGUMENTS

The examiner has acknowledged that claims 2 and 4 are allowable if rewritten to overcome the rejection under 35 U.S.C. 112, second paragraph. Claim 2 has been amended to include proper antecedent basis to overcome the rejection under 35 U.S.C. 112, second paragraph. Claim 4 depends on claim 2 and therefore the rejection under 35 U.S.C. 112, second paragraph is also overcome.

Tsao (US Patent No. 5,702,035) discloses a tubular container with a sealed end and an open end with an applicator. A liquid is disposed in the tubular container with a non-toxic liquid silicone stopper separating the liquid from an air gap near the open end wherein when the sealed end is broken, the liquid will flow out of the open end into the applicator.

Applicant's invention has a housing with two sealed ends and a scoring at one or more predetermined locations with a seal comprising of a viscous substance inserted in the housing separating the liquid enclosed within it from the air thereby creating an air chamber near the sealed end between the viscous substance and the sealed end of the housing wherein the flow control/shock absorbing seal will maintain the separation between the liquid and the air in the housing and transmit the shock experienced by the liquid during transportation to the air thereby dampening the pressure, and will control the flow of the liquid through the flow control/shock absorbing seal and out of the container when the container is opened at the scoring.

Tsao discloses a liquid silicone stopper **66** separating the liquid **64** from an air gap **68** near the open end of the tubular container **61** that is wrapped by an absorbent element **62** wherein applicant's invention uses a viscous substance to separate the liquid from the sealed air chamber near the sealed end of the housing separating the liquid from the sealed end of the

housing. Tsao does not teach the limitations of the applicant's invention and the there is no suggestion for the limitation. Furthermore, in applicant's claims 3 and 5, the housing has either a positive or negative pressure to perform unique functions that are not taught or suggested in Tsao. In addition, claim 5 discloses a device that will retrieve a liquid which is not even possible with Tsao. Tsao does not teach or suggest the limitations and functions of applicant's invention. Therefore, applicant's claims are patentable over Tsao since they are not taught or suggested by Tsao and are not obvious in view of Tsao.

Examiner indicated that in Tsao (US 5,702,035) the "housing is pressurized because under pressure, the silicone clings to the walls of a container." This is a misinterpretation of the disclosure in Tsao. Tsao discloses that "Liquid **64** is contained in the hollow interior of the barrel **61**. When in use, the sealing element **63** is broken at the notch **65** while holding the sealed end higher than the applicator end. Atmospheric pressure then causes the liquid **64** to flow through the silicone stopper **66**, the gap **68** and into the absorbing element **62**. Under pressure, the silicone clings to the walls of a container, thereby forming a through-way." Tsao, Column 2, lines 23 through 30. It is obvious that the "pressure" referred to in Tsao is the pressure from the liquid **64** when it flows pass the silicone stopper **66** upon opening of the sealed end **63**. This is also indicated in column 1, lines 47 through 48, wherein Tsao stated that "[t]he viscosity of the silicone causes it to adhere to the walls of the container." Since the barrel **61** is not sealed at the end with the silicone stopper **66**, the barrel **61** cannot possibly be pressurized. The only air in the barrel **61** is in the air gap **68** between the silicone stopper **66** and the open end with the absorbent element **62**. Since the absorbent element **62** is porous and cannot seal the barrel **61** and maintain a pressure in the air gap **68**, it is not possible to maintain any pressure in the air gap **68**.

In addition, the examiner indicated, with regard to claim 5, that "when the liquid is not in the housing, it contains two air chambers." This is the use of improper hindsight by the examiner. Furthermore, Tsao actually teach away from the claimed invention and the modification suggested by the examiner will render Tsao unsatisfactory for the intended purpose. The sole purpose of the structure disclosed in Tsao is to contain and subsequently release the liquid into the applicator end for application. Without the liquid, the structure recited in Tsao serves no function at all. Without the liquid, when the sealing element **63** is broken at the notch **65**, no function is achieved since there is no liquid in the barrel **61** to flow through the silicone stopper **66**. Furthermore, even when the liquid is not in the housing, it is not capable of performing the intended use of applicant's claimed invention. Since the barrel **61** is not sealed at the end with the silicone stopper **66**, the barrel **61** cannot possibly be negatively pressurized. The only air in the barrel is in the air gap **68** between the silicone stopper **66** and the open end with the absorbent element **62**. Since the absorbent element **62** cannot seal the barrel **61** and maintain any negative pressure in the air gap **68**, it is not possible to maintain any negative pressure in the air gap **68**. Without the negative pressure, the barrel **61** cannot suck any fluid place in contact with the open end of the barrel into the barrel. Therefore, applicant's claimed invention is structurally different than that disclosed by Tsao and also performs a different function.

Applicant hereby submits that the claim rejections under 35 U.S.C. §112, second paragraph and the claim rejection under 35 U.S.C. §103(a) have all been overcome. Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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